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(702) 307-2022

E-Filed on 7/12/10

4 TRUSTEE  
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7 **UNITED STATES BANKRUPTCY COURT**

8 **DISTRICT OF NEVADA**

9 In re ) Case No. BK-S 08-18806 BAM  
10 COATS, DAMON L., ) IN CHAPTER 7 PROCEEDINGS  
COATS, CYNTHIA PATRICIA ) MOTION TO COMPEL TURNOVER  
11 )  
12 Debtor(s) ) Date: August 25, 2010  
13 ) Time: 11:00 a.m.  
14 ) Place: Foley Federal Bldg., Third Floor  
15 )  
16 )

**MOTION TO COMPEL TURNOVER OF NON-EXEMPT BANK ACCOUNT BALANCE**

17 Lenard E. Schwartz, the duly appointed Chapter 7 Trustee in the above referenced proceeding,  
18 hereby moves this court for an order compelling the turnover of Debtors' non-exempt bank account  
19 balance in the amount of \$1,484.89.

20 This Motion is made and based upon the accompanying Memorandum of Points and  
21 Authorities, the papers on file herein and any oral argument that the Court may entertain at the time of  
22 any hearing on this motion.

23 **POINTS AND AUTHORITIES**

24 **FACTUAL BACKGROUND**

25 1. This case was commenced by the filing of a Chapter 7 petition on 08/06/08.  
26 2. From review of the Debtors' bank statements, the Debtors had a balance of \$7,238.00  
27 on the date of filing.  
28 3. \$5,422.50 of the balance is exempt.

4. The Trustee applied \$30.61 from the Debtors' 2008 tax refund to the balance owed to the Estate, leaving \$1,784.89 due the estate.

5. The Debtors signed a Redemption Agreement and Stipulation for the payment of the non-exempt equity in the amount of \$1,784.89 on October 7, 2009, attached hereto as EXHIBIT "1".

6. To date, only two payments of \$150.00 have been made, leaving a balance of \$1,484.89 still owing to the estate.

7. The Debtors have failed to turnover the remaining non-exempt bank account balance which is property of the bankruptcy estate.

8. The Trustee now moves this Court for an order compelling turnover of the remaining non-exempt bank account balance in the amount of \$1,484.89.

## LEGAL ARGUMENT

As set forth above, as of the petition date, the Debtors had a non-exempt bank account balance of \$1,784.89, which, pursuant to 11 U.S.C. § 541, now constitutes property of the estate. 11 U.S.C. § 542 compels an entity, in possession, custody or control of property of the estate to turn the same over to the trustee upon demand.

Pursuant to 11 U.S.C. §541(a)(2) all non-exempt assets belonging to the debtor is property of the estate and subject to recovery by the Trustee.

"Property of the estate" is defined in section 541(a) of the Code as "all legal or equitable interests of the debtor in property as of the commencement of the case." The legislative history makes it plain that "[t]he scope of this paragraph [section 541(a) ] is broad. It includes all kinds of property, including tangible or intangible property...." S. Rep. No. 95- 989, 95th Cong., 1st Sess. 82 (1978), *reprinted in* 1978 U.S. Code Cong. & Admin. News 5787, 5868. In *In re Bialac*, 712 F.2d 426 (9th Cir.1983) we said that section 541(a)'s definition of property "was intended to be broad and all-inclusive," *id.* at 430, and "an interest is not outside its reach because it is novel or contingent or enjoyment must be postponed." *Id.* at 431 (quoting *\*519 Segal v. Rochelle*, 382 U.S. 375, 379, 86 S.Ct. 511, 515, 15 L.Ed.2d 428 (1966)).

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## CONCLUSION

Movant respectfully requests this Court enter an Order compelling Debtors to turnover non-exempt bank account funds in the amount of \$1,484.89 to the trustee within ten (10) days from service of the notice of entry of the order.

Dated: July 8, 2010



LENARD E. SCHWARTZER, Trustee

## DECLARATION OF TRUSTEE

I declare, under penalty of perjury, that the foregoing is true and correct, to the best of my knowledge, information and belief.

Dated: July 1, 2010



LENARD E. SCHWARTZER, Trustee

LENARD E. SCHWARTZER, TRUSTEE  
 2850 S. Jones Blvd, Suite 1  
 Las Vegas, Nevada 89146-8308  
 Off (702) 307-2022 Fax (702) 974-0976

**REDEMPTION AGREEMENT & STIPULATION**

Case No. BK-S 08-18806Debtor(s) Damon & Cynthia Coats

The Debtor(s) in the above referenced bankruptcy case have elected to redeem the non-exempt equity in the following assets of the bankruptcy estate by making payments to the Trustee:

1. Cash on Hand and Cash in Bank(s)	\$ <u>1,1784.89</u>
2. Tax Refund(s)	\$ _____
3. Equity in Vehicles or other motor operated items	\$ _____
4. Other Non-exempt Assets _____	\$ _____
	\$ _____
	\$ _____
	\$ _____
<b>Total to be Redeemed</b>	<u>\$ 1,1784.89</u> <i>22</i> <i>OCTOBER</i>

Payments are due on the 15 day of each month, beginning with the month of September, 20 09. The payment will be \$ 150.00 per month for a period of 12 months, or until the balance is paid in full.

All payments should be in the form of checks or money orders (absolutely no cash) and are to be made payable to LENARD E. SCHWARTZER, TRUSTEE and mailed to the above address. You must put your bankruptcy case number on each payment made.

Where the Debtor(s) are redeeming equity in a vehicle, Debtor(s) agree to provide the Trustee with the original Certificate of Title and Proof of Insurance by no later than the \_\_\_\_\_ day of \_\_\_\_\_ 20 09.

If any payment is more than 10 days late, the entire balance will be due and payable. If you fail to make the payments you stipulate that the Trustee may submit an Order to the US Bankruptcy Court (a) requiring you to make all the payments, (b) dismissing your case and/or (c) denying your discharge.

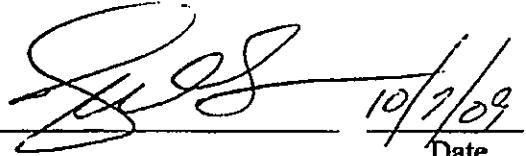
SIGNATURES:



Debtor

10/1/09

Date



Date



Attorney for Debtor

10/30/09

Date

Trustee

Date